

AF/EFU



THE UNITED STATES POSTAL SERVICE WITH SUFFICIENT POSTAGE AS FIRST CLASS MAIL, IN AN ENVELOPE ADDRESSED TO

MAIL STOP APPEAL BRIEF  
COMMISSIONER FOR PATENTS  
P.O. BOX 1450  
Alexandria, VA 22313-1450

ON

August 11, 2008

Mark B. Quatt Registration No. 30,484

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: McAllister et al. Docket No: D-43656-01  
Serial No.: 10/648,027 Examiner: Ahmed, Sheeba  
Filing Date: August 26, 2003 GAU: 1794  
Title: Polymeric Film With Low Blocking And High Slip Properties

REPLY BRIEF

Commissioner for Patents  
Alexandria, VA 22313-1450  
Dear Sir:

This Reply Brief is being filed in response to the Examiner's Answer mailed June 9, 2008. The Applicants respectfully traverse the comments in the Examiner's Answer with respect to two issues.

1. The Examiner's Answer at page 5 states in part that

The applicants may have unexpected results for the combination of materials, but a strong showing would be needed to overcome the rejection. The applicants' showing is not commensurate in scope with the breath of their current claims. The applicants amended the claims to state that all the layers comprise primary fatty amidic acid and that outer layers comprise a fraction of the amount of material present in one of the first and second substrate layers.

This section of the Examiner's Answer then moves on to a discussion of the Longmoore reference.

Applicants respectfully submit that the above quoted portion of the Answer misconstrues the nature and extent of the amendments. While it is true that all the layers comprise primary fatty amidic wax, and that the outer layers contain a (stated) fraction of the amount of material present in one of the first and second substrate layers, these are by no means the only claim limitations that have been introduced into the independent claims in the course of the prosecution of this application.

Independent claims 7 and 14 include among others the requirements that

- a first and second outer layer each comprises primary fatty amidic wax in an amount of 15% to 50% of the amount of primary fatty amidic wax in the respective substrate layer (claim 7); or that a first and second outer layer each comprises primary fatty amidic wax in an amount of 15% to 50% of the amount of primary fatty amidic wax in the substrate layer (claim 14);
- from 1,000 ppm to 5,000 ppm of a transition metal salt of stearic acid, or ester of stearic acid, is present in at least one of the first and second outer layers, and the first and second substrate layers (or substrate layer for claim 14); and
- the first and second substrate layers (claim 7) or the substrate layer (claim 14) each comprises from 4,000 ppm to 10,000 ppm of oleamide.

The benefit of the combination of these components in a single film is described in detail in the Applicants' Brief, and the Board is invited to review that discussion.

Applicants respectfully submit that the showing described in their Brief, taken from the specification itself, is both commensurate in scope with the claim language now on appeal, and amply demonstrative of unexpected results.

2. In Applicants' Brief filed March 20, 2008 it was pointed out that Longmoore et al. teach away from the use of erucamide because of its volatility and the problem of plating on processing equipment, causing a clean-up problem (column 1, lines 32 to 37), and teach away from behenamide, in a surface layer intended for printing, because of its tendency to build up on the doctor blade of a rotogravure printing system (column 1, line 61 to column 2, line 9). Longmoore et al. propose the use of N,N'-bis-alkylene fatty acid amide in one of the surface layers of a film (column 2, lines 24 to 62). In contrast, the present claims are directed to recite a primary fatty amidic wax. N,N'-bis-alkylene fatty acid amide is not a primary fatty amidic wax. Longmoore et al. do not appear to teach a primary fatty amidic wax in each of the first substrate layer, second substrate layer, first outer layer, and second outer layer (cf. claim 7) or in each of the first outer layer, second outer layer, and substrate layer (cf. claim 14). Longmoore et al. also state that with their invention, "the problem of vaporization encountered with erucamide and to a lesser extent with behenamide is eliminated" (column 5, lines 3 to 5).

In reply to these comments, the Examiner's Answer at page 7 states:

Appellants further argue that Longmoore et al. teach away from the use of erucamide because of its volatility and the problem of plating on processing equipment, causing a clean-up problem (column 1, lines 32 to 37), and teach away from behenamide, in a surface layer intended for printing, because of its tendency to build up on the doctor blade of a rotogravure printing system (column 1, line 61 to column 2, line 9). Again, the Examiner disagrees with the Appellants interpretation of the reference. Longmoore et al. specifically teach using fatty acid amides in the core layer of films. They state that "slip agent is frequently incorporated into the core layer of composite films, which are then heat treated to force it to migrate to the surface layers" (column 4, lines 37+).

Applicants submit that the comments of the Answer do not rebut the clear teaching away. Longmoore simply and clearly teaches away from erucamide (a primary fatty amidic wax), identifying problems of volatility and plating. Longmoore et al. al. also clearly discourage the use of behenamide (another primary fatty amidic wax) because of its tendency to build up on the doctor blade of a rotogravure printing system. The response in the Answer, referring to the fact that slip agent is frequently incorporated into the core layer of composite films, acknowledges a general teaching of the reference, but this general teaching in favor of slip agents does not negate the very specific and straightforward teachings of the reference discouraging the use of both erucamide and behenamide.

A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984) ( MPEP 2141.03 VI.) Longmoore et al. provide a classic case of teaching away, of discouraging, by warnings of failure or significant technical disadvantage, the skilled artisan from proceeding in a particular direction.

For the reasons stated above as well as those set forth in the Appeal Brief filed March 20, 2008, Appellants respectfully request that the rejections be reversed and that all of the claims on appeal be allowed.

Cryovac, Inc  
PO Box 464  
Duncan, SC 29334

8-11-08

Date

Respectfully submitted,



Mark B. Quatt  
Attorney for Applicants  
Registration No. 30,484  
(864) 433-2817